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No. 694

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

HUNT OIL COMPANY and BODCAW COMPANY,
Petitioners,

vs.

MARATHON OIL COMPANY, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

BRIEF FOR MARATHON OIL COMPANY, RESPONDENT, IN OPPOSITION

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Shreveport, Louisiana, January 13, 1964.

LECOMTE, SHREVEPORT, LOUISIANA

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MAY IT PLEASE THE COURT:

The petitioners, Hunt Oil Company and Bodcaw Company, here seek review of a judgment of the United States Court of Appeals for the Fifth Circuit on writ of certiorari. Their petition is based on the premise that the Court of Appeals "has decided an important state . . . question in a way in conflict with applicable state . . . law."(1) In point of fact, however, the question decided

(1) Rule 19 1 (b), Revised Rules of the Supreme Court of the United States.

was not, in the sense of the Rules of this Court, important; neither was the question decided in conflict with any law of the State of Louisiana.

QUESTION PRESENTED

This case presents purely a question of interpretation of the Cotton Valley Unitization and Pressure Maintenance Agreement (the "Agreement"), the question being whether or not the Agreement by its provisions automatically extended the unitized "D" Sand Participating Area to include the separate North "D" Sand Pool.

STATEMENT

The Agreement defined an area termed the "'D' Sand Participating Area" by reference to a map annexed thereto and a particular description of the Area in governmental subdivisions, also annexed thereto.(2) The Agreement then unitized for cycling and production purposes the "D" Sand Participating Area, which was comprised of the lands underlain by the "D" Sand reservoir.(3) This reservoir had been discovered prior to 1940(4) and gas and liquid hydrocarbons have been produced from it ever since.

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(2) Definitions, Cotton Valley Agreement, Petitioners' Appendix, p. 86.

(3) Finding of Fact No. 3(a), Pet. App., p. 22; 205 F. Supp. 885 at p. 887.

(4) Finding of Fact No. 6(a), Pet. App., p. 25; 205 F. Supp. 885 at pp. 888, 889

Petitioners Hunt Oil Company and Bodcaw Company contended the Agreement meant, and that the parties to the Agreement intended, that the "D" Sand Participating Area should be extended to include the lands overlying another reservoir (the North "D" Sand Pool) discovered in 1953 and completely separated from the old reservoir by an impermeable barrier of shale and siltstone over a mile wide.(5) The District Court found from an examination of the Agreement(6) "that the parties did not contemplate the possibility of . . . the 'D' Sand Participating Area under the Agreement including more than one hydrocarbon pool or reservoir . . .", and also found,(7) among other things, that the Agreement had been construed by the parties to provide for the enlargement of any Participating Area "to include only lands containing pressure connected parts of the same hydrocarbon pool or reservoir as was included in the Participating Area under enlargement", further stating: "This construction is binding upon the parties".(8)

These findings were entered by the District Court after careful consideration of the evidence of fourteen witnesses, adduced during a trial occupying three days, relative to the factual background of the Agreement and

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(5) Finding of Fact No. 4, Pet. App., p. 24; 205 F. Supp. 885 at p. 888.

(6) Finding of Fact No. 6(d), Pet. App., p. 29; 205 F. Supp. 885 at p. 890.

(7) Finding of Fact No. 6(f), Pet. App., pp. 30, 31; 205 F. Supp. 885 at p. 891.

(8) Article 1956, Civil Code of Louisiana, cited in Pet. App., p. 5.

the manner in which it had been applied during the twenty years during which extensive and important business arrangements had been carried out under its provisions.

The United States Court of Appeals for the Fifth Circuit approved and adopted by reference the findings and conclusions of the District Court.(9)

ARGUMENT

From the foregoing it appears that petitioners are actually asking this Court to review the lower court's decision on a question of fact. In an attempt to render this less obvious, however, and to bring their petition for review on certiorari within the categories outlined in Rule 19 of the Rules of this Court, petitioners urge that the opinion of the Supreme Court of Louisiana in *Texaco, Inc. v. Vermillion Parish School Board*(10) sets up a rule of state law governing all contracts concerning unitization of oil, gas and other hydrocarbons (whatever the provisions of such contracts); that is, that all field unitization contracts, in order to avoid absurd and inequitable consequences, should include all later discovered reservoirs, and that the Court of Appeals has failed to apply this rule to the present case.

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(9) Opinion of Court of Appeals for the Fifth Circuit, Pet. App., p. 37; 321 F. 2d 702.

(10) 152 So. 2d 541, 244 La. 408.

The Question Decided In The Present Case Was Not Decided In The Texaco Case.

The Louisiana Supreme Court Did Not Pass on the Question of the Unitization of the Subsequently Discovered Sand.

The *Texaco* case, as submitted to the state District Court, involved two principal questions, (1) whether the disputed School Board Sand was unitized as a part of the Unit Area created by the Erath Agreements and (2) if so, the basis of participation of all parties to the Erath Agreements in production from that Sand. It is only the first of these questions which is analagous to the question argued in the present case, namely, whether the "D" Sand Participating Area established by the Cotton Valley Agreement was enlarged under the terms of the Agreement to include the subsequently discovered North "D" Sand Pool.

The opinion and findings of the state trial court, in the *Texaco* case, are quoted in full in the opinion of the Court of Appeal; and on the question of the inclusion of the School Board Sand in the Erath Unit Area, the trial court held:

> "'1. The School Board Sand as defined hereinabove is covered by the Erath Agreements, as amended, as are all sands below 8000 feet located beneath the Unit Area as delineated by said agreements and containing "unitized substances" defined in Article I(b) of said Erath Agreements, whether or not said sands and reservoirs were known or unknown at the time of the confection of such agreements."(11)

(11) Pet. App., p. 56; 145 So. 2d 383 at p. 391.

This finding of the state District Court was approved and affirmed, *sub silentio*, by the state Court of Appeal; for its entire opinion is devoted to the question of the proper division of the production from the School Board Sand among the parties to the Erath Agreements.

And the question of whether the School Board Sand was unitized by the Erath Agreements was not before the Louisiana Supreme Court at all. For in its order granting review of the decision and judgment of the Court of Appeal it is provided:

"* * * Writs were granted, limited to a review of these two questions:

"1. Whether royalties from the School Board Sand should be paid

"'a. On the basis of a recalculation of the equity of each tract in the whole Erath Unit, or

"'b. On the basis of a calculation of the percentage of equity of each tract shown on Plaintiff's Exhibit P-B to be lying in the Unit Area North of the fault line.

"'2. Whether the percentage of equity in all sands and reservoirs containing unitized substances not known and determined to be productive in June, 1944, which may hereafter be placed on production, are to be calculated according to judgment to be rendered herein.'"(12)

It inevitably follows, therefore, that the Louisiana Supreme Court's decision in the *Texaco* case did not interpret the Erath Agreements as to whether or not they unitized the School Board Sand. And, as we shall now demonstrate, the analagous question arising under the

(12) Pet. App., p. 72; 152 So. 2d 541 at p. 544; 244 La. 408 at p. 418.

Cotton Valley Agreement was the only question passed on here.

The Only Question Passed on in this Case was Whether or Not the Subsequently Discovered Reservoir was Unitized by the Cotton Valley Agreement.

It is, of course, obvious that the Federal courts in this case were interpreting and applying the Cotton Valley Agreement and the Louisiana courts, in the *Texaco* case, the Erath Agreements. The very considerable difference between the two, in respect of the question of extension to a newly discovered reservoir, may be judged from the relevant portions of the two contracts.(13)

The petitioners' suit depends entirely upon their assertion that the North "D" Sand Pool, under provisions of the Agreement, became a part of the "D" Sand Participating Area established by the Agreement, in which they had interests.

Petitioners urged in the District Court, and they flatly assert here, that the words of the Agreement were clear and explicit and led to their interpretation. But the District Court (Finding 5, Pet. App. p. 24) found to the contrary and (Finding 6, Pet. App. pp. 25-31) carefully documented its decision. It gave eight reasons for its interpretation of the Agreement and only one of these

(13) Cf. discussion of provisions of Erath Agreements and quotations therefrom by state District Court (Pet. App., pp. 46, 47) and Articles I and IV of Cotton Valley Agreement (Pet. App., p. 88 and pp. 91-95). A reference to the United States District Court's Findings 5 and 6, Pet. App., pp. 24, 25, 205 F. Supp. 885, pp. 888-892, will indicate the care and attention it gave to the interpretation of Article IV of the Agreement.

(Finding 6(g), Pet. App. p. 31) was that the petitioners' interpretation would lead to an inequitable result.

It thus appears: (1) The result of this suit depended entirely upon the interpretation of the Agreement by the United States Courts; (2) the Louisiana trial court, with the silent approval of the Louisiana Court of Appeal, decided in the *Texaco* case that the different Erath Agreements meant something else in the analagous situation, and (3) this decision was not reviewed by the Louisiana Supreme Court.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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Shreveport, Louisiana, January 13, 1964.

PROOF OF SERVICE

I, C. FORD CURRIER, one of the attorneys for Marathon Oil Company, a respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 22nd day of January, 1964, I served copies of the foregoing Brief in Opposition to Petition for a Writ of Certiorari, on the several parties to this action by mailing copies of said document, each in a duly addressed envelope, with first class postage prepaid, to the respective attorneys of record for said parties, all of whom reside within 500 miles from Shreveport, Louisiana, as follows:

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This certificate and proof of service is made pursuant to Rule 33 of the Rules of the Supreme Court of the United States.

C. FORD CURRIER